



December 2, 2024

Comment Intake—Expedited Funds Availability Act
c/o Legal Division Docket Manager (Docket ID: CFPB-2024-0051)
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Petition for Rulemaking to Amend the Expedited Funds Availability Act (EFAA) to Reduce Deposit Hold Times Based on Technological Improvements; Docket Number CFPB-2024-0051 (Oct. 2, 2024)

Dear Ladies and Gentlemen:

Better Markets¹ appreciates the opportunity to comment on the petition for rulemaking to amend the Expedited Funds Availability Act (“EFAA”)² to reduce deposit hold times based on technological improvements (“Petition”), posted by the Consumer Financial Protection Bureau (“CFPB”).³

Checks are used throughout the financial system as a payment method, facilitating the transfer of funds among consumers, businesses, and government entities. Unlike some other methods of payment in use today, there is a waiting period between when a check is deposited and when the funds are available to the recipient of the check. Banks explain the need for this waiting time as necessary to examine whether a check is fraudulent and then to transfer funds from the bank of the person or entity that wrote the check to the bank of the person or entity that deposited the check.

This waiting time, however, causes higher costs and other harms to check depositors—particularly low-income consumers and small businesses. For example, if the receiver of a check cannot wait a few days for the check to clear, they often turn to high-cost check cashers or payday lenders to receive the funds instantaneously, but these services come with high, unclear, or predatory fees. In other words, the delay between cashing a check and receiving the funds is

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² 12 U.S.C. § 4002.

³ Petition for Rulemaking to Amend the Expedited Funds Availability Act (EFAA) to Reduce Deposit Hold Times Based on Technological Improvements; Docket Number CFPB-2024-0051; (Oct. 2, 2024), <https://www.regulations.gov/docket/CFPB-2024-0051>.

causing a massive transfer of wealth away from low-income Americans and small businesses to banks and other nonbank entities such as check cashers and payday lenders.

The EFAA states that financial regulators—specifically the Federal Reserve (“Fed”) and CFPB—are ***obligated*** to act and make the time in which a check recipient receives their money as short as possible.⁴ While it is indeed true that far fewer checks are used today than in prior decades, the Main Street Americans and small businesses that use checks will ***directly benefit*** from this action. Better Markets urges the CFPB and Fed to fulfill their obligations by reducing the delay in making funds available, considering the clear technological and process improvements that have occurred in recent years. In today’s world when retailers such as Amazon and Walmart can deliver a wide range of physical products to Americans’ homes and businesses within hours, there is no reason why banks still must delay the delivery of money deposited by checks for several days, especially since the money transfer process now occurs electronically and no longer requires the shipment of any physical paper checks.

BACKGROUND

Checks are reported to have been first used in the Mediterranean region during the first millennium as a form of payment between local merchants.⁵ Of course, checks have evolved since that first usage, but the underlying utility has persisted; as a result, checks are still used in modern America to buy goods and services, pay bills, and transfer money between two entities.

The Fed’s latest data shows that 11.2 billion checks were written, deposited, and processed by banks and the Fed in 2021, for a total of more than \$27 trillion.⁶ While both the number and dollar amount of check transactions have declined in the last two decades (see Charts 1 and 2), it is clear that checks remain an important method of payment for Main Street Americans.⁷

⁴ 12 U.S.C. § 4002(d)(1).

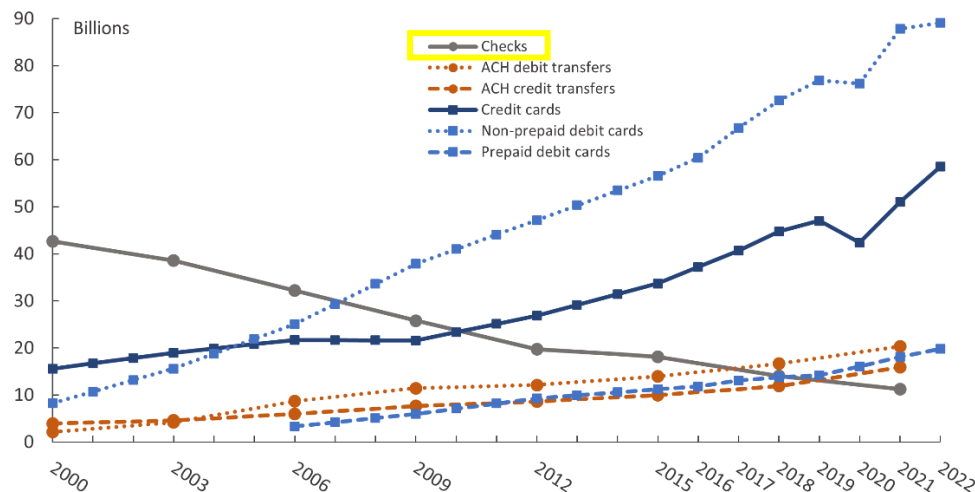
⁵ See Stephen Quinn & William Roberds, *The Evolution of the Check as a Means of Payment: A Historical Survey*, Federal Reserve Bank of Atlanta 93 ECONOMIC REVIEW (2008), https://www.atlantafed.org/-/media/documents/research/publications/economic-review/2008/vol93no4_quinn_roberds.pdf.

⁶ Board of Governors of the Federal Reserve System, *Federal Reserve Payments Study: Cards and Alternative Payments, 2021 and 2022* (Nov. 2024), <https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm>.

⁷ *Id.*

Chart 1

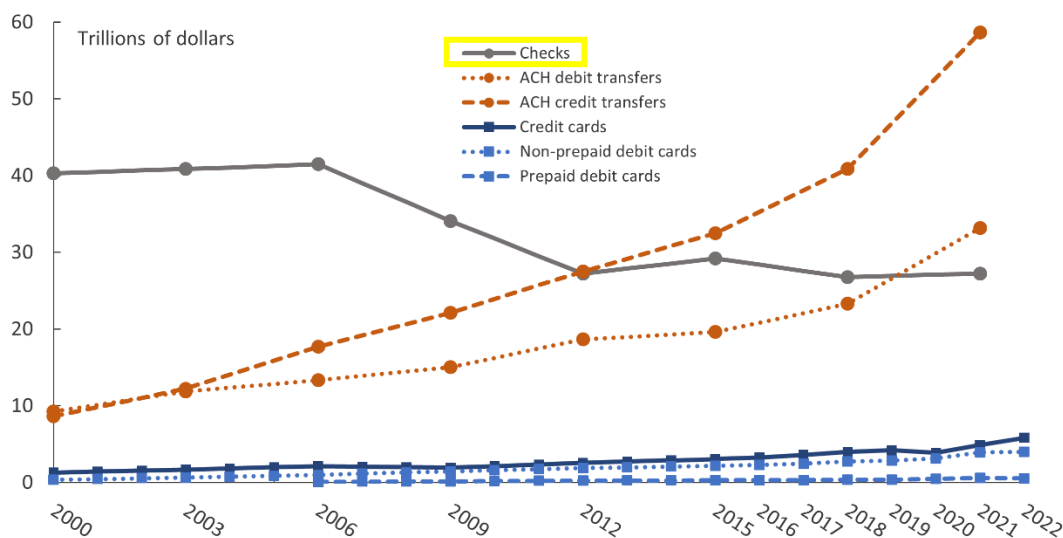
Trends in noncash payments, by number, 2000–22



Note: All estimates are on a triennial basis, except that card payments were estimated for every year since 2015. Credit card payments include general-purpose and private-label versions. Prepaid debit card payments include general-purpose, private-label, and electronic benefits transfer (EBT) versions. Estimates for prepaid debit card payments are not available for 2000 or 2003. The points mark years for which data were collected and estimates were produced. Lines connecting the points are linear interpolations.

Chart 2

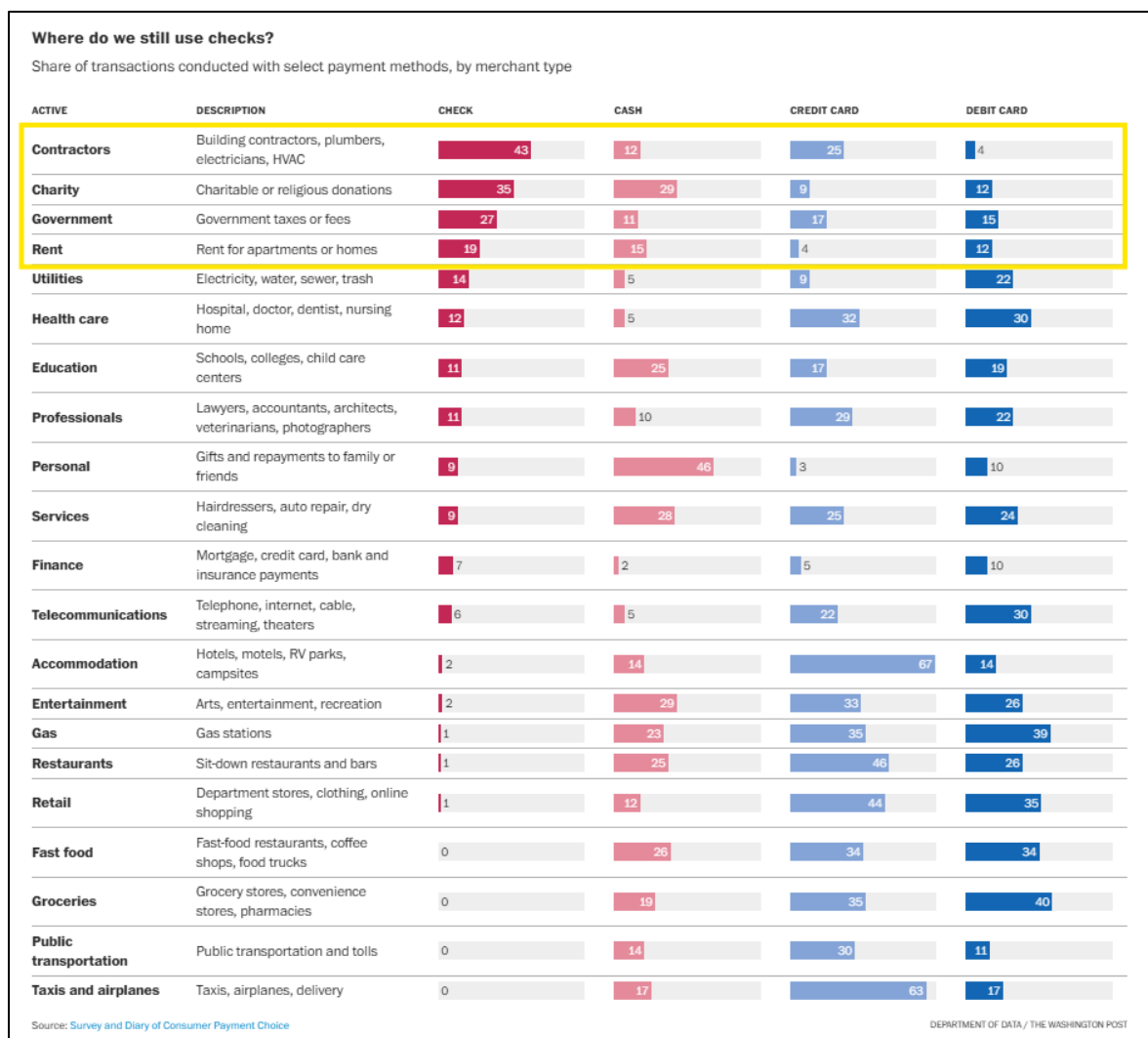
Trends in noncash payments, by value, 2000–22



Note: All estimates are on a triennial basis, except that card payments were estimated for every year since 2015. Credit card payments include general-purpose and private-label versions. Prepaid debit card payments include general-purpose, private-label, and electronic benefits transfer (EBT) versions. Estimates for prepaid debit card payments are not available for 2000 or 2003. The points mark years for which data were collected and estimates were produced. Lines connecting the points are linear interpolations.

The data show that *checks remain the primary payment method* for several entities, including contractors (building contractors, plumbers, electricians, HVAC), charity (charitable or religious donations), government (government taxes or fees), and rent (rent for apartments or homes) so they cannot be overlooked and disregarded (see Chart 3).⁸ Main Street Americans and small businesses are directly affected by the speed of funds transfer in a check transaction. For example, most contractors are small businesses and the speed of money being available directly affects their ability to pay workers or buy supplies needed to remain operational. Similarly, Main Street Americans who are the recipients of government payments, are directly affected by the speed at which those funds are made available to pay for everyday necessities.

Chart 3



⁸ Andrew Van Dam, *Paper Checks Are Dead. Cash Is Dying. Who Still Uses Them?*, THE WASH. POST (Sept. 15, 2023), <https://www.washingtonpost.com/business/2023/09/15/paper-checks-who-uses/>.

The EFAA clearly states that the CFPB and Fed are obligated to limit the delay between depositing a check and receiving funds:

Notwithstanding any other provision of law, the Board, jointly with the Director of the Bureau of Consumer Financial Protection, shall, by regulation, reduce the time periods . . . to as short a time as possible and equal to the period of time achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks.⁹

When the EFAA was passed in 1987, regulators and lawmakers may have imagined but were unlikely to have fully understood the technological advances that would occur in the coming decades, and the fundamental changes to the check-clearing process that these changes would enable. For instance, until 2003, the Fed operated 45 physical locations throughout the country where physical checks were delivered; Fed staff worked to process each check to debit and credit the proper accounts.¹⁰

Along with technological innovation, the terrorist attacks in September 2001 that grounded all air transportation in the US for several days spurred the Fed to develop and Congress to pass the Check Clearing for the 21st Century Act (“Check 21”).¹¹ This legislation allowed for an electronic image of a check to be used for the clearing process and eliminated the need to spend time and money transporting physical checks around the country for clearing. By 2010, almost all checks were processed electronically¹² and the Fed had consolidated its check processing infrastructure from 45 physical locations to just one location for all check payments nationwide.¹³

⁹ 12 U.S.C. § 4002(d)(1).

¹⁰ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, CHECK SERVICES, https://www.federalreserve.gov/paymentsystems/check_about.htm (last accessed Nov. 22, 2024).

¹¹ 12 U.S.C. § 5001.

¹² See David B. Humphrey & Robert M. Hunt, *Getting Rid of Paper: Savings from Check 21*, at 6, Federal Reserve Bank of Philadelphia, Working Paper No. 12-2 (May 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2079034.

¹³ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *supra* note 10.

Check 21 brought important changes that increased the speed of the check-clearing process. Most notably, all checks are now processed as local checks, which reduces the clearing time for funds to become available to the check recipient.¹⁴ The EFAA had originally established a system comprised of local and nonlocal checks. Nonlocal checks were from banks that were geographically farther away and were allowed a longer time to clear, based on the Fed's system of transporting physical checks when the EFAA was passed. Appropriately, with the shift to electronic imaging under Check 21, all checks are now considered local. However, under Regulation CC, banks are still allowed two business days to clear a local check, and even more time for checks from new customers or those for which the bank believes that collectability is doubtful.

Delays of even two business days can be very consequential and financially damaging for customers needing money from a deposited check more quickly. According to one source, nearly four in ten adults (39%) say they worry most or all of the time that they will not have enough money to pay bills.¹⁵ For these Americans, paying a fee—even a large fee—to a check cashing service or payday lender that offers immediate access to funds may make sense if the alternative is missing a rent payment or other bill with an even more damaging penalty or fee for being late. For example, research shows that **70% of people who use check cashing services actually have bank accounts**.¹⁶ These people are choosing to use a check casher—likely as a last resort—because the check casher offers faster access to their money than the bank.

Opponents of increasing the speed of check clearing to provide consumers and businesses with funds more quickly cite a range of risks, including fraud and operational challenges.¹⁷ However, the EFAA minimizes these risks. The EFAA does not apply to new accounts, and it only applies to the first \$5,000 of a check's value. These factors limit the amount of actual losses that a bank would experience if it provided funds to a customer that were later found to be uncollectible or fraudulent. With regard to operational capabilities, many banks have shown that they indeed do have the capability to provide funds from a cashed check much faster than the 2-business day maximum under the EFAA because they provide services similar to check cashers—with immediate access to funds—but usually for an extra fee, even for existing customers.

¹⁴ BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REGULATION CC (AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS), <https://www.federalreserve.gov/paymentsystems/regcc-about.htm> (last accessed Nov. 22, 2024).

¹⁵ See Matt Egan, *39% of Americans Worry They Can't Pay the Bills*, CNN (July 23, 2024), <https://www.cnn.com/2024/07/23/business/inflation-cost-of-living-cnn-poll/index.html>.

¹⁶ See Aaron Klein, *Can Fintech Improve Health?* 21-23, BROOKINGS INSTITUTION (Sept. 2021), https://www.brookings.edu/wp-content/uploads/2021/09/20210922_Klein_Can_fintech_improve_health.pdf.

¹⁷ See WORLD BANK GROUP, RISKS IN FAST PAYMENT SYSTEMS AND IMPLICATIONS FOR NATIONAL PAYMENTS SYSTEM OVERSIGHT 5-6 (Sept. 2021), https://fastpayments.worldbank.org/sites/default/files/2021-10/Oversight_Final_0.pdf.

In summary, the EFAA clearly states that the Fed and CFPB are obligated to change check-clearing processing times when warranted. The evidence is clear that technological advancements warrant consideration of a change. Moreover, making this change would benefit economically vulnerable Americans and small businesses.

SUMMARY OF THE PETITION

This Petition asks the CFPB and Fed to comply with the EFAA and reduce the time period that banks have to make funds available to customers in the check-clearing process.¹⁸

As explained earlier in this letter, the Fed made some important improvements after the implementation of Check 21 with the change to consider all checks as local and eliminate the nonlocal check designation that allowed banks even more time to delay making funds available to customers. Furthermore, the Fed and CFPB made changes in 2019 to index the amount of a check that is available to consumers on the first business day after deposit to inflation.¹⁹ However, banks still have two business days to make the funds available to their customers.

SUMMARY OF COMMENTS

We strongly support the Petition. The Fed and CFPB should update and expedite the check-clearing process under the EFAA and Regulation CC which implements it, to benefit Main Street Americans—particularly vulnerable, low-income consumers and small businesses. Our recommendations are as follows:

- Low-income consumers need access to the funds from a cashed check in larger amounts and more quickly. The data show that most consumers who use check cashing services for immediate access to their funds do indeed have a bank account but choose to use the check casher, despite the fees, because they need the funds immediately. Increasing the speed of funds availability would save consumers money and increase their well-being.
- Small businesses would also benefit if money from a cashed check is made available in larger amounts and more quickly. While it is true that the number and dollar amount of checks have declined in recent years, checks remain the primary method of payment for many people and small businesses. Making the funds available from check payments more quickly or in larger amounts would help small businesses have funding to pay employees, buy supplies, or make other necessary payments.

¹⁸ Petition for Rulemaking to Amend the Expedited Funds Availability Act (EFAA) to Reduce Deposit Hold Times Based on Technological Improvements, *supra* note 3, at 2.

¹⁹ Availability of Funds and Collection of Checks (Regulation CC); RIN: 3170-AA31; Document Number 2019-13668; 84 Fed. Reg. 31687 (July 3, 2019), <https://www.federalregister.gov/documents/2019/07/03/2019-13668/availability-of-funds-and-collection-of-checks-regulation-cc#footnote-13-p31688>.

COMMENTS

I. LOW-INCOME CONSUMERS NEED ACCESS TO THE FUNDS FROM A CASHED CHECK IN LARGER AMOUNTS AND MORE QUICKLY.

While many aggregate data measures suggest that the economy is strong and consumers are prospering, a vastly different story appears when we look at more granular metrics. One of these metrics shows the large share—39% of Americans—who say they worry most or all of the time that they will not have enough money to pay bills.²⁰ These are vulnerable individuals who are living paycheck to paycheck. Getting immediate access to the funds from a check is of vital importance to these individuals and could make the difference in whether a bill is paid on time or late fees are incurred.

The data show that most consumers who use check cashing services for immediate access to their funds *do indeed have a bank account but make a choice to use the check casher*, despite the fees, for the benefit of gaining immediate access to their funds. *Check cashing services at nonbanks cost Main Street Americans \$2.4 billion between 2021 and 2023.*²¹ Increasing the speed of funds' availability or making a greater amount of money from a cashed check available immediately would save vulnerable, low-income consumers money, reduce the stress of living paycheck to paycheck, and increase the amount that these individuals could save to increase their wealth.

II. SMALL BUSINESSES WOULD ALSO BENEFIT IF MONEY FROM A CASHED CHECK IS MADE AVAILABLE IN LARGER AMOUNTS AND MORE QUICKLY.

While the overall usage of checks has declined in recent years,²² checks remain the primary method of payment for many small businesses.²³ More than 40 percent of contractors' transactions are paid for by check, more than any other payment method. More than 10 percent of payments for health care, childcare, and other professional services—including lawyers, accountants, architects, veterinarians, and photographers—are also made by check.

If small businesses such as these could have access to funds more quickly, they could operate more smoothly, with timely payments to employees and purchases of supplies. They could also potentially expand and grow, which benefits entire communities in Main Street America.

²⁰ Egan, *supra* note 15.

²¹ Hannah Gdalmann, MK Falgout, Necati Celik, & Meghan Greene, *FinHealth Spend Report 2024* at 15, Financial Health Network (Aug. 2024), <https://finhealthnetwork.org/wp-content/uploads/2024/08/FinHealth-Spend-Report-2024-FHN.pdf>.

²² Board of Governors of the Federal Reserve System, *supra* note 6.

²³ Van Dam, *supra* note 8.

CONCLUSION

We hope these comments are helpful as the CFPB considers this Petition.

Sincerely,



Shayna M. Olesiuk
Director of Banking Policy
solesiuk@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464
<http://www.bettermarkets.org>